

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI**

---

MORGAN HOWARTH,

Plaintiff,

v.

WEST COUNTY RENOVATIONS LLC, and  
CHRISTOPHER DAYMOND MARKS,

Defendants.

---

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Civil Action No.:

COMPLAINT AND JURY  
DEMAND

**COMPLAINT FOR COPYRIGHT INFRINGEMENT**

Plaintiff, MORGAN HOWARTH (“Howarth” or “Plaintiff”), brings this complaint in the United States District Court for the Eastern District of Missouri against WEST COUNTY RENOVATIONS LLC (“West County”), and CHRISTOPHER DAYMOND MARKS (“Marks”) (together “Defendants”), alleging as follows:

**PARTIES**

1. Plaintiff is an experienced commercial photographer of forty (40) years. Plaintiff specializes in commercial and residential landscape and architectural photography. Plaintiff works with a wide range of advertising and editorial clients, including but not limited to: AARP, CBS, Clark Shoes, Cuddledown Catalog, GH Bass Shoes, Hilton Hotels, Niche Media, Sears, and Thomas Moser Furniture. Plaintiff resides in Gainesville, Virginia.
2. On information and belief, West County is a Domestic Limited Liability Company existing under the laws of the State of Missouri, with headquarters in Fenton, Missouri. West County is a full-service home remodeling and construction company. West County owns, operates,

and is solely responsible for the content on its commercial website,  
[www.westcountyrenovationsstl.com](http://www.westcountyrenovationsstl.com).

3. On information and belief, information and belief, Marks is an individual and owner of West County.

#### JURISDICTION AND VENUE

4. This is a civil action seeking damages for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 et seq.).
5. This Court has jurisdiction under 17 U.S.C. § 101 et seq.; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).
6. This Court has personal jurisdiction over Defendants, and venue in this District is proper under 28 U.S.C. § 1391(b), in that the events giving rise to the claims occurred in this district, Defendants engaged in infringement in this district, Defendants reside in this district, and Defendants are subject to personal jurisdiction in this district.
7. This Court also has personal jurisdiction over Defendants, and venue in this District is proper under 28 U.S.C. § 1400(a).

#### FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

8. Plaintiff captured the photograph, “Gilmer\_Bath\_Only\_F.jpg” (“Copyrighted Photograph”) on March 27, 2007. [Exhibit 1]. Plaintiff captured Copyrighted Photograph in Chevy Chase, Maryland using great technical skill and careful timing, as well as significant time and energy.
9. Plaintiff registered Copyrighted Photograph with the United States Copyright Office on September 28, 2011 (Registration No.: VA 1-803-266). [Exhibit 2].

10. On or about May 20, 2012, Plaintiff posted Copyrighted Photograph to [www.morganhowarth.photoshelter.com/image/I0000NF1jZcIfO5E](http://www.morganhowarth.photoshelter.com/image/I0000NF1jZcIfO5E) (Last visited February 11, 2021). [Exhibit 3].
  11. Beginning on or about June 1, 2018, Defendants copied and posted Copyrighted Photograph to the Defendants' commercial website, [www.westcountyrenovationstl.com](http://www.westcountyrenovationstl.com). (Last visited January 16, 2020).
  12. Defendants posted Copyrighted Photograph to the following URLs:
    - [www.westcountyrenovationstl.com/areas-of-service/home-improvement-contractor-valley-park-mo](http://www.westcountyrenovationstl.com/areas-of-service/home-improvement-contractor-valley-park-mo) (Last visited January 16, 2020). [Exhibit 4].
    - [www.westcountyrenovationstl.com/missouri/Basement-Remodeling-Valley-Park-MO.html](http://www.westcountyrenovationstl.com/missouri/Basement-Remodeling-Valley-Park-MO.html). [Exhibit 5].
    - [www.westcountyrenovationstl.com:80/missouri/Kitchen-Remodeling-Ballwin-MO.html](http://www.westcountyrenovationstl.com:80/missouri/Kitchen-Remodeling-Ballwin-MO.html). [Exhibit 6].
  13. Defendants copied and used Copyrighted Photograph without license nor permission from Plaintiff.
- COUNT I: INFRINGEMENT OF COPYRIGHT PURSUANT TO 17 U.S.C. § 101 ET SEQ.
14. Plaintiff incorporates herein by this reference each and every allegation contained in each paragraph above.
  15. Plaintiff is, and at all relevant times has been, the copyright owner or licensee of exclusive rights under United States copyright with respect to Copyrighted Photograph, which is the subject of a valid Certificate of Copyright Registration by the Register of Copyrights.
  16. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce and distribute the Copyrighted Photograph to the public.

17. Plaintiff is informed and believes Defendants, without the permission or consent of Plaintiff, copied and used Copyrighted Photograph on Defendants' commercial website, [www.westcountyrenovationstl.com](http://www.westcountyrenovationstl.com). In doing so, Defendants violated Plaintiff's exclusive rights of reproduction and distribution. Defendants' actions constitute infringement of Plaintiff's copyright and exclusive rights under copyright.
18. Plaintiff is informed and believes that the foregoing act of infringement was willful and intentional, in disregard of and with indifference to the rights of Plaintiff.
19. Upon information and belief, Marks is the dominant influence in West County, and determined and/or directed the policies that led to the infringements complained of herein. Accordingly, Marks is jointly and severally liable for direct copyright infringement. *See Broad. Music, Inc. v. It's Amore Corp.*, No. 3:08CV570, 2009 WL 1886038 (M.D. Pa. June 30, 2009), citing *Sailor Music v. Mai Kai of Concord, Inc.*, 640 F. Supp. 629, 634 (D.N.H.1984). Upon further information and belief, Marks maintained the right and ability to control the infringing activities of West County, and had a direct financial interest in those activities by virtue of his ownership in the company and the profits derived from the direct sale of West County's products and services. Accordingly, Marks is vicariously liable for copyright infringement. *See, e.g., Broad. Music, Inc. v. Tex Border Mgmt.*, 11 F. Supp. 3d 689, 693-94 (N.D. Tex. 2014).
20. As a result of Defendants' infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to actual or statutory damages, including any profits realized by Defendants attributable to the infringement, pursuant to 17 U.S.C. § 504 for Defendant's infringement of Copyrighted Photograph.

COUNT II: REMOVAL AND ALTERATION OF INTEGRITY OF COPYRIGHT  
MANAGEMENT INFORMATION PURSUANT TO 17 U.S.C. § 1202

21. Plaintiff is informed and believes that Defendants, without the permission or consent of Plaintiff, knowingly and with the intent to conceal infringement, intentionally removed the copyright management information from Plaintiff's Copyrighted Photograph before displaying Copyrighted Photograph on Defendants' public website, [www.westcountyrenovationstl.com](http://www.westcountyrenovationstl.com). In doing so, Defendants violated 17 U.S.C. § 1202(a)(1) and (b)(1).
22. As a result of Defendants' actions, Plaintiff is entitled to actual or statutory damages pursuant to 17 U.S.C. § 1203(c). Plaintiff is further entitled to their attorney's fees and costs pursuant to 17 U.S.C. § 1203(b)(5).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- A. Declaring that Defendants' unauthorized conduct violates Plaintiff's rights under the Federal Copyright Act;
- B. Immediately and permanently enjoining Defendants, its officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them from copying and republishing Plaintiff's Copyrighted Photograph without consent or otherwise infringing Plaintiff's copyright or other rights in any manner;
- C. Ordering Defendants to account to Plaintiff for all gains, profits, and advantages derived by Defendants by their infringement of Plaintiff's copyright or such damages as are proper, and since Defendants intentionally infringed Plaintiff's copyright, for the maximum allowable statutory damages for each violation;

- D. Awarding Plaintiff actual and/or statutory damages for Defendants' copyright infringement in an amount to be determined at trial;
- E. Awarding Plaintiff his costs, reasonable attorney's fees, and disbursements in this action, pursuant to 17 U.S.C. § 505, 17 U.S.C. § 1203(b)(3), and § 1203(b)(5); and
- F. Awarding Plaintiff such other and further relief as is just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims for which there is a right to jury trial.

Dated: March 4, 2021

\_\_\_\_/s/\_\_\_\_*David C. Deal*\_\_\_\_\_  
David C. Deal (VA Bar No.: 86005)  
The Law Office of David C. Deal, P.L.C.  
P.O. Box 1042  
Crozet, VA 22932  
434-233-2727, Telephone  
david@daviddeal.com  
*Counsel for Plaintiff*